



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: MARCH 17, 2023

IN THE MATTER OF:

Appeal Board No. 626843

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board Nos. 626842, 626843 and 626844, the claimant appeals from the decisions of the Administrative Law Judge filed November 21, 2022, insofar as they sustained the initial determination holding the claimant ineligible to receive benefits, effective February 8, 2021 through September 5, 2021, on the basis that the claimant was not totally unemployed and/or had earnings in excess of the statutory limitation, as modified with respect to eight specified weeks to be three days; and sustained the initial determinations charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits of \$7,500 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and \$4,732 in Pandemic Emergency Unemployment Compensation (PEUC) benefits recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by zero effective days and charging a civil penalty of \$1,834.80 on the basis that the claimant made willful misrepresentations to obtain benefits, as modified to be consistent with the decision.

The Appeal Board, on its motion pursuant to Labor Law § 620 (3), has reopened and reconsidered the decisions of the Administrative Law Judge filed November 21, 2022, insofar they modified the initial determinations.

At the combined telephone conference hearings before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance by the claimant.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked fulltime for the employer herein, a retail furniture store. The claimant earned \$15.25 per hour. The claimant was paid on a weekly basis which was directly deposited into her bank account.

Between February 8, 2021 and September 5, 2021, the claimant worked between 22 and 30 hours in each of the statutory weeks ending June 20, July 18, August 15, and September 5; and worked 31 or more hours in each of the statutory weeks ending March 14, July 4 and August 8. During the same period, the claimant earned more than \$504 in each of the statutory weeks ending February 14, February 21, February 28, March 7, March 21, March 28, April 4, April 11, April 18, April 25, May 2, May 16, May 23, May 30, June 6, June 13, June 27, July 11, July 25, August 1, August 22, and August 29.

For the weeks ending February 14, 2021 through September 5, 2021, the claimant certified for benefits each week online. For each week for which she was certifying, she was asked to select how many hours she had worked to determine how many days of work to report. For the week ending March 14, 2021, she certified that she had worked two days. For each of the weeks ending June 20, July 4, July 18, August 8, August 15 and September 5, 2021, the claimant certified that she had worked zero days during the week. During each weekly certification, she was also asked if she earned in excess of the statutory limit of \$504. For each of the certifications for the weeks ending February 14, 2021 through September 5, 2021, the claimant responded that she did not earn in excess of the statutory limit of \$504. She certified this way because she needed the money. The claimant received \$7,500 in FPUC benefits and \$4,732 in PUA benefits.

OPINION: Initially, we note that the decision of the Judge used Friday as the end of the week in modifying the initial determinations, rather than using Sunday as the end of the statutory week for unemployment insurance purposes. Using the statutory week of Monday through Sunday, the credible evidence establishes that for each of the statutory weeks ending June 20, July 18, August 15, and September 5, 2021, the claimant had worked between 22 hours and 30 hours and is therefore deemed to have worked three days during each of those weeks. We therefore conclude that she was not totally unemployed for three days during each of those four weeks. In addition, as the claimant worked 31 hours or more for each of the weeks ending March 14, July 4 and

August 8, 2021, she is deemed to have worked four or more days in each of those weeks and we conclude that she was not totally unemployed for those entire weeks. The claimant also earned in excess of \$504 for each of the weeks ending February 14, February 21, February 28, March 7, March 21, March 28, April 4, April 11, April 18, April 25, May 2, May 16, May 23, May 30, June 6, June 13, June 27, July 11, July 25, August 1, August 22, and August 29, 2021. Based on these earnings, we conclude that she was unable to accrue any effective days during those weeks and was therefore not totally unemployed for each of those entire weeks. Accordingly, the claimant was not entitled to benefits for the days that she lacked total unemployment and the benefits she received for those days were overpaid. As the claimant received federal benefits to which she was not entitled, consistent with federal law, the FPUC benefits and PUA benefits she received are recoverable.

The credible evidence further establishes that for each of the weeks during the period from February 8, 2021 through September 5, 2021, with the exception of the week ending May 9, 2021 which is not before us, the claimant certified to the incorrect number of days worked or that she had not earned over the statutory limit of \$504. As the claimant knew how many hours she worked each week, she is deemed to have known how many days she had worked each week. Likewise, as the claimant knew how much she had earned each week, she knew that she had earned over \$504 during the weeks at issue. In this regard, although the claimant was unable to recall certifying for benefits, the claimant ultimately conceded to certifying and failing to report the number of days she worked and the amount she earned because she needed the money. Under these circumstances we further conclude that the claimant's certifications constitute willful misrepresentations. She is

therefore subject to the forfeiture penalty and civil penalty.

DECISION: The decisions of the Administrative Law Judge, insofar as appealed from and reopened, are modified as follows and, as so modified, are affirmed.

In Appeal Board Nos. 626842, 626843 and 626844, the initial determinations, holding the claimant ineligible to receive benefits, effective February 8, 2021 through September 5, 2021, on the basis that the claimant was not totally unemployed and/or had earnings that exceeded the statutory limitation; charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits of \$7,500 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of

2020 and \$4,732 in Pandemic Emergency Unemployment Compensation (PEUC) benefits recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by zero effective days and charging a civil penalty of \$1,834.80 on the basis that the claimant made willful misrepresentations to obtain benefits, are sustained.

The claimant is denied benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER